# PRISCILLA OWEN: A RESTRAINED, PRINCIPLED JURIST

## BY C. BOYDEN GRAY

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The Ninth Circuit's recent decision to hold the pledge of allegiance unconstitutional[1] serves as a vivid reminder that the federal bench must be staffed by jurists who are committed to deciding cases according to the law, not their personal policy preferences. Judges are neither legislators nor constitutional drafters, and it is an abuse of power to use the judicial office to impose one's political views in the guise of legal interpretation.

Though startling, and inconsistent with America's constitutional traditions, the Ninth Circuit's ruling has provoked a nationwide civics lesson. The pledge decision presents an opportunity for the American people to reconsider what sort of judges should be confirmed to the federal bench. And at a more general level, it is an occasion to revisit the issues of the judiciary's proper role in a democratic system of government, and what is meant by "judicial activism" and "judicial restraint."

Ultimately, judicial restraint is an appreciation for the judiciary's limited powers, and a reluctance to usurp prerogatives that the Constitution assigns or reserves to the other branches of government. In particular, restrained judges:

- adhere faithfully to binding precedent issued by higher courts, especially the United States Supreme Court;
- defer to the policy choices the legislature enacts into positive law, and refrain from substituting their views for those of the legislature;
- interpret the Constitution and laws enacted by the legislature as intended by those who wrote them;
- respect the traditional authority of trial courts, which are in the best position to assess the credibility and demeanor of witnesses, to make factual findings;
- uphold the right of individuals to take actions which the law permits them to take; and
- approach each case without any preconceived notions, or reflexively siding with any one litigant.

Judged by any of these criteria, Justice Priscilla Owen of the Texas Supreme Court, whom the President has nominated to a vacancy on the U.S. Court of Appeals for the Fifth Circuit, undoubtedly is a restrained and principled jurist. Time and again, in her opinions Justice Owen has stressed that the function of a court in interpreting legal text is to give effect to the intent of the lawgiver. Justice Owen consistently has interpreted Texas statutes in light of the binding precedents of the United States Supreme Court. She has deferred to the enactments of the Texas Legislature, denying that judges legitimately can interpret statutory language to reflect their own political or ideological commitments. And she has declined, as an appellate judge, to meddle with the traditional prerogative of the trial courts to make findings of fact.

[1] *See* Newdow v. U.S. Congress, No. 00-16423 (9th Cir. June 26, 2002).

The discussion below demonstrates Justice Owen's fidelity to these and other jurisprudential pillars, a fidelity that earned her a unanimous "well-qualified" rating from the American Bar Association, the highest rating a judicial nominee can possibly achieve. We agree that Justice Owen is superlatively well suited to occupy a seat on the Fifth Circuit, and we urge the Senate to approve her nomination as soon as possible.

## I. Balancing the Rights of Protesters and Patients: *Operation Rescue v. Planned Parenthood*

Judges often are faced with difficult cases where the rights of individual parties collide. The judge is left with the delicate task of balancing the rights of both parties in accordance with the law. Justice Owen's decision to join the majority in *Operation Rescue-National v. Planned Parenthood of Houston and Southeast Texas, Inc.*[2] is compelling evidence of her commitment to decide cases according to the governing law. Consistent with the rule of law, the majority neutrally balanced the competing interests of two mutually antagonistic sets of litigants: abortion providers and pro-life activists. According to the Court, "[a]ccommodating interests like property and privacy rights along with free expression often necessitates limitations on all of them."[3]

In *Operation Rescue*, the Court upheld the vast majority of restrictions the trial judge imposed on the pro-life protesters. Although the majority made several modifications to the trial court's order—for example, reducing the size of buffer zones surrounding abortion clinics—it ultimately approved an injunction that (1) established buffer zones around certain abortion clinics and providers' homes, where active protests were taking place; (2) prohibited more than two activists from entering a protest zone at any given time; (3) prohibited protesters from shouting or yelling; (4) prohibited more than a single demonstrator from approaching patients to offer "sidewalk counseling"; (5) prohibited demonstrators from approaching a given patient more than once when she enters the clinic and once when she leaves; and (6) required demonstrators to stop talking to patients when they indicated a desire to be left alone. According to the Court, the modified injunction "protects the demonstrators' right to engage in peaceful speech. At the same time, the provision ensures that the demonstrators will not interfere with the significant government interests protected by the buffer zone."[4] The majority—including Justice Owen—also upheld the trial court's decision to assess over $1 million in punitive damages against the protesters.[5]

At the time it was handed down, the *Operation Rescue* decision was universally regarded as a victory for the abortion providers, even though some groups now claim that the majority's opinion "displayed unwillingness to protect abortion clinics from

[2] 975 S.W.2d 546 (Tex. 1998).
[3] *Id*. at 555.
[4] *Id*. at 567
[5] *See id*. at 569.

harassing protesters."[6] For instance, at the time, a Planned Parenthood officer hailed the decision as "a complete and total victory."[7] Planned Parenthood's attorney in the case said of the ruling: "It wasn't a home run. It was a grand slam."[8] Moreover, Justice Owen declined to join Justice Raul Gonzales's partial dissent, which argued that the injunction offended the protesters' free speech rights.[9] The political expediency of the group's revised interpretation, which distorts the decision beyond all recognition, is apparent.

## II. Deference to the United States Supreme Court: *Doe 1(I)* and *Doe 2*

Judicial restraint—and indeed the rule of law—requires that judges on lower courts commit themselves to following the binding precedents of superior tribunals: "As applied in a hierarchical system of courts, the duty of a subordinate court to follow the laws as announced by superior courts is theoretically absolute."[10] In both *In re Jane Doe* ("*Doe 1(I)*")[11] and *In re Jane Doe 2* ("*Doe 2*"),[12] Justice Owen conscientiously applied U.S. Supreme Court precedents dealing with what underage girls must prove before they can have an abortion without telling their parents. Her opinions recognized that the U.S. Supreme Court had interpreted the precise language used in the Texas Parental Notification Act in other cases before the law was enacted. In such a case, canons of judicial construction require that a judge presume that the legislature was aware of the precedent and intended to incorporate it into the legislation. In a word, Justice Owen was reading the Texas statute in light of the pronouncements of the highest court in the land.

Needless to say, Justice Owen's reading of the statute is not the only reasonable interpretation of what the Legislature intended; other members of the Court could, and certainly did, reach different conclusions about the Legislature's intent. But Justice Owen's stated commitment to implement the Legislature's will belies any claim that she was seeking to substitute her views, whatever they may be, for those of the people's elected representatives.

Like all of the twelve Parental Notification Act cases the Texas Supreme Court has handed down to date, *Doe 1(I)* and *Doe 2* required the Court to interpret a Texas statute that lays down the general rule that at least one parent of an underage girl must

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[6] *See National Abortion Federation Report on Priscilla Owen* at 2 (2002) ("*NAF Report*").
[7] Juan B. Elizondo Jr., *Abortion Clinic Buffers Reined in*, AUSTIN AM.-STATESMAN, July 4, 1998, at B2 (quoting Judy Reiner, senior vice president for Planned Parenthood of Houston and Southeast Texas).
[8] Clay Robinson, *Anti-Abortion Protesters Lose '92 Case Ruling; $1.2 Million in Damages Upheld*, HOUSTON CHRON., July 4, 1998, at A1 (quoting Neal Manne, attorney for Planned Parenthood of Houston and Southeast Texas).
[9] *See Operation Rescue*, 975 S.W.2d at 573-84 (Gonzales, J., concurring in part and dissenting in part).
[10] 1B JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 0.401, at I-2 (2d ed. 1993).
[11] 19 S.W.3d 249 (Tex. 2000). The Texas Supreme Court uses Arabic and Roman numerals to differentiate the multiple parental notification cases it has heard. In a given case, the Arabic numeral refers to the identity of the girl, and the Roman numeral specifies which appearance the girl is making before the Texas Supreme Court. So, for example, "*Doe 1(I)*" signifies the first Jane Doe plaintiff in her first appearance before the Court.
[12] 19 S.W.3d 278 (Tex. 2000).

be notified before the girl can have an abortion.[13] The statute contains three exceptions to that rule: a parent need not be notified if: (1) the girl is "mature and sufficiently well informed"; (2) "notification would not be in the best interest of the minor"; or (3) "notification may lead to physical, sexual, or emotional abuse of the minor."[14]

None of the parental notification cases involved any dispute over whether the Constitution guarantees the right to an abortion, or even the scope of that right. Instead, the cases dealt with routine legal issues such as the proper method of interpreting a statute, and the degree of deference an appellate court owes to a trial court's factual findings.[15] As the majority in *Doe 1(I)* emphasized, "[w]e are not called upon to decide the constitutionality or wisdom of abortion. Arguments for or against abortion do not advance the issue of statutory construction presented by this case. Instead, our sole function is to interpret and apply the statute enacted by our Legislature."[16] It should go without saying that a decision to deny a girl a judicial bypass, pursuant to standards established by the state Legislature, does not prevent her from having an abortion; it only requires that one of her parents know about it before she does so.

In *Doe 1(I)*, the Court interpreted the first exception to the general rule that parents must receive notice that their minor daughter is seeking an abortion: notice is not necessary when the girl is "mature and sufficiently well informed."[17] Justice Owen—

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[13] *See* TEX. FAM. CODE § 33.002(1) (2000):

> (a) A physician may not perform an abortion on a pregnant unemancipated minor unless:
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> (1) the physician performing the abortion gives at least 48 hours actual notice, in person or by telephone, of the physician's intent to perform the abortion to:
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> (A) a parent of the minor, if the minor has no managing conservator or guardian; or
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> (B) a court-appointed managing conservator or guardian.

[14] *Id.* § 33.003(i). The complete text of the exceptions reads as follows:

> The court shall determine by a preponderance of the evidence whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents or a managing conservator or guardian, whether notification would not be in the best interest of the minor, or whether notification may lead to physical, sexual, or emotional abuse of the minor. If the court finds that the minor is mature and sufficiently well informed, that notification would not be in the minor's best interest, or that notification may lead to physical, sexual, or emotional abuse of the minor, the court shall enter an order authorizing the minor to consent to the performance of the abortion without notification to either of her parents or a managing conservator or guardian and shall execute the required forms.

[15] In some of these cases, Justice Owen has gone out of her way to express her view that certain statutory restrictions on abortion would violate the Constitution. For instance, the U.S. Supreme Court has held that a parental *consent* statute must contain a judicial bypass provision to be constitutional, *see* Akron v. Akron Ctr. for Reprod. Health, 462 U.S. 416, 439-42 (1983) ("*Akron I*"), but it has left unsettled whether parental *notification* statutes, like Texas's, must allow for judicial bypass, *see* Ohio v. Akron Ctr. for Reprod. Health, 497 U.S. 502, 510 (1990) ("*Akron II*"). Nevertheless, Justice Owen reasoned that "there is reasoning in [Supreme Court precedent] that would suggest that the United States Supreme Court might hold that bypass procedures are necessary in notification statutes." *Doe 1(I)*, 19 S.W.3d at 262 (Owen, J., concurring). Justice Owen also has expressed her view that "[t]he constitutionality of requiring a minor to notify *both* parents is questionable." *Doe 2*, 19 S.W.3d at 287 (Owen, J., concurring) (citing Hodgson v. Minnesota, 497 U.S. 417, 450-55 (1990)); *see also In re* Doe 3, 19 S.W.3d 300, 320 (Tex. 2000) (Owen, J., concurring).

[16] *Doe 1(I)*, 19 S.W.3d at 251.

[17] TEX. FAM. CODE § 33.003(i).

while agreeing with the result reached by the Court majority—wrote separately to emphasize that by using the language "mature and sufficiently well informed," the Legislature intended to ensure that girls be exposed to the widest possible range of information when deciding whether to have an abortion without telling their parents. According to Owen, "the Legislature intended to require minors to be informed about the decision to have an abortion to the full extent that the law, as interpreted by the United States Supreme Court, will allow."[18] Justice Owen simply deferred to and applied the precedent of a superior tribunal. Because the language of the parental notification statute itself tracks language from Supreme Court caselaw,[19] Justice Owen reasonably concluded that the Legislature meant to incorporate the full body of Supreme Court parental notification precedent. The majority also recognized that the Legislature intended to incorporate the Supreme Court's jurisprudence.[20]

Specifically, Justice Owen argued that the Legislature meant to require that girls be exposed to the "profound philosophic arguments surrounding abortion."[21] This requirement derives from the Supreme Court's decision in *Planned Parenthood v. Casey*,[22] where, after reaffirming the validity of *Roe v. Wade*,[23] it held that "the state may enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term and that there are procedures and institutions to allow adoption of unwanted children."[24]

Justice Owen never suggested that the Legislature intended for girls to be exposed to any particular viewpoint: they should learn about arguments "surrounding" abortion, not "against" abortion. And Justice Owen expressly denied that courts could coerce girls into following any particular set of views, religious or otherwise: "A court cannot, of course, require a minor to adopt or adhere to any particular philosophy or to profess any religious beliefs."[25] Astonishingly, an interest group's report on Justice Owen excises this crucial sentence from its quotation of her concurrence, replacing it with an ellipsis.[26]

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[18] *Doe 1(I)*, 19 S.W.3d at 262 (Owen, J., concurring).

[19] *Compare* Bellotti v. Baird, 443 U.S. 622, 643-44 (1979) (plurality opinion) ("*Bellotti II*") (holding that a minor girl seeking an abortion must be able to show "that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes"), *with* TEX. FAM. CODE § 33.003(i) ("The court shall determine by a preponderance of the evidence whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents or a managing conservator or guardian.").

[20] *Doe 1(I)*, 19 S.W.3d at 254 ("Our Legislature was obviously aware of this jurisprudence when it drafted the statute before us.").

[21] *Id*. at 263 (Owen, J., concurring).

[22] 505 U.S. 833 (1992).

[23] 410 U.S. 113 (1973).

[24] *Casey*, 505 U.S. at 872-73 (plurality opinion); *see also* Poelker v. Doe, 432 U.S. 519, 521 (1977) (per curiam) ("[T]he Constitution does not forbid a State or city, pursuant to democratic processes, from expressing a preference for normal childbirth.").

[25] *Doe 1(I)*, 19 S.W.3d at 264 (Owen, J., concurring); *see also id*. at 265 ("I agree with the Court that she should not be required to obtain counseling or other services from a particular provider.").

[26] *See NAF Report* at 10 (quoting *Doe 1(I)*, 19 S.W.3d at 264-65 (Owen, J., concurring)):

Nor did Justice Owen "reject Planned Parenthood as a 'qualified source of information'" about abortion, as an interest group now claims.[27] She simply quoted a decision of the U.S. Supreme Court, which specifically acknowledged that abortion clinics are unlikely to provide girls with all of the information they need to make an informed decision about whether to have an abortion: "[i]t seems unlikely that [a girl] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place."[28]

Justice Owen's conclusion that the Legislature meant for girls to learn about the impact an abortion will have on the fetus[29] likewise derives from the Supreme Court's decision in *Casey*:

> Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.[30]

Justice Owen's concurrence in *Doe 2* is equally compelling evidence of her commitment to following the established precedents of the U.S. Supreme Court. In *Doe 2*, the Texas Supreme Court interpreted a second exception to the general rule that a girl's parents must be notified before she can have an abortion: "whether notification would not be in the best interest of the minor."[31] Again agreeing with the judgment issued by the Court's majority, Justice Owen wrote separately to emphasize that this exception reflects the Legislature's intent that courts should evaluate two factors: (1)

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> She should also indicate to the court that she is aware of and has considered that there are philosophic, social, moral, and religious arguments that can be brought to bear when considering abortion. . . [R]equiring a minor to exhibit an awareness that there are issues, including religious ones, surround [sic; error in *NAF Report*] the abortion decision is not prohibited by the Establishment Clause.

The group is fortunate that its audience is the public at large, not the federal judiciary; a number of courts have held that attorneys can be sanctioned for using ellipses to mischaracterize the views of their opponents. *See, e.g.*, Napoli v. Sears, Roebuck & Co., 835 F. Supp. 1053, 1063 (N.D. Ill. 1993) (faulting counsel for "the manipulative use of ellipses and omissions," and emphasizing that "[m]isrepresenting a court's opinion is unwise; indeed, it clearly provides the basis for sanctions under Fed. R. Civ. P. 11"); Angelico v. Lehigh Valley Hosp. Ass'n, No. CIV.A 96-2861, 1996 WL 524112, at *4 - *5 (E.D. Pa. Sept. 13, 1996) (stating that "[e]llipses in quotes from opposing parties' briefs that completely distort the original are inappropriate," and admonishing the plaintiff's counsel to refrain from "attempting to gain an advantage in argument by mischaracterizing the positions of opposing parties").

[27] *See NAF Report* at 10.

[28] H.L. v. Matheson, 450 U.S. 398, 410 (1981) (citation omitted).

[29] *Doe 1(I)*, 19 S.W.3d at 265 (Owen, J., concurring).

[30] *Casey*, 505 U.S. at 882 (plurality opinion).

[31] *See* TEX. FAM. CODE § 33.001(i) (2000).

whether notifying the girl's parents is not in her best interest, and (2) whether the abortion itself is in her best interest.[32]

The Legislature's belief that this exception would be available only to girls who can prove *both* that abortion is in their best interest *and* that notifying a parent is not, derives from the U.S. Supreme Court's decision in *Lambert v. Wicklund*.[33] In that case, the Court interpreted a Montana statute that, like Texas's, allowed a girl to have an abortion without notification if "the notification of a parent or guardian is not in the best interests of the [girl]."[34] The *Lambert* Court interpreted this language to require the girl to prove that abortion without notification (not just the failure to provide notification) was in her best interest. According to the Court, "a judicial bypass procedure requiring a minor to show that *parental notification is not* in her best interests is equivalent to a judicial bypass procedure requiring a minor to show that *abortion without notification* is in her best interest."[35] The *Lambert* Court further reasoned that nothing in Montana's statute "permits a court to separate the question whether parental notification is not in a minor's best interest from an inquiry into whether abortion (without notification) is in the minor's best interest."[36]

Ironically, in a later *Jane Doe* case, the members of the *Doe 2* majority themselves came to embrace Justice Owen's interpretation of the "best interest" exception. In *In re Jane Doe 4* ("*Doe 4(II)*"),[37] the Court considered *both* whether the abortion itself was in the girl's best interest—specifically, whether her medical condition made abortion prohibitively risky[38]—*and* whether notifying her parents was not in her best interest.[39] The Court's implicit conclusion that the health risks of abortion were relevant to whether the girl was entitled to a "best interest" judicial bypass suggests that Justice Owen's interpretation of that provision has carried the day.

Statements in the legislative history made by members of both parties confirm Justice Owen's conclusion that the exceptions to the parental notification requirement were intended to be just that: exceptions, not the rule. Representative Phil King

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[32] *See In re Doe 2*, 19 S.W.3d 278, 285 (Tex. 2000) (Owen, J., concurring) ("The inquiry under the 'best interest' provision is not simply whether notifying a parent that the minor is pregnant and is seeking an abortion would be in the minor's best interest. The inquiry is whether *proceeding with an abortion* without notification of a parent is in the minor's best interest.").

[33] 520 U.S. 292 (1997) (per curiam).

[34] MON. CODE ANN. § 50-20-212(5) (1995), *quoted in Lambert*, 520 U.S. at 294.

[35] *Lambert*, 520 U.S. at 297.

[36] *Id.* at 298. The fact that the *Lambert* Court construed Montana's statute to require that the girl prove two elements, not just one, is further indicated by Justice Stevens's separate opinion in that case. Concurring in the judgment, Justice Stevens faulted the majority for concluding that "a young woman must demonstrate both that abortion is in her best interest and that notification is not." *Id*. at 302 (Stevens, J., concurring in the judgment). There would have been no need for Justice Stevens to write separately if the majority had held that a girl was entitled to the "best interest" exception simply by showing that notification was not in her best interest, with no analysis of whether the abortion itself was in her best interest.

[37] 19 S.W.3d 337 (Tex. 2000).

[38] *See id*. at 340 (reasoning that "if she does have a current health risk, then her physical needs and the potential dangers may weigh in favor of involving her parents in her decision").

[39] *See id*. (speculating that "notifying her parents could cause harm to their family structure and potentially lead her parents to withdraw support").

predicted that parents would be told that their minor daughter was planning to have an abortion in the "vast, vast, vast majority of cases."[40] Representative Dianne White Delisi, the Parental Notification Act's sponsor, indicated that judges would grant bypasses only "in rare cases."[41] Representative Patricia Gray called the bypass procedures "exceptional,"[42] and Senator David Bernsen likewise referred to them as "small exceptions."[43]

Indeed, the mere fact that the law was passed is evidence that the Texas Legislature intended to make it more difficult for minor girls to have abortions without their parents' knowledge. Before the law was enacted, girls were free to have abortions without telling their parents. If the Legislature meant to "assist minors in their attempt to obtain abortions," as one interest group now claims,[44] rather than to enable parents to play a part in one of the most important decisions their daughters will ever make, it would have had no need to pass the statute. Justice Owen's willingness to give effect to the Legislature's expressed intent in adopting the Parental Notification Act reveals her to be the sort of restrained jurist who deserves a seat on the federal bench.

## III. Deference to the Texas Legislature: *Doe 3*

One of the most important aspects of judicial restraint is a judge's commitment to interpreting statutes and the Constitution in light of the text, structure, and context, and the judge's corresponding reluctance to cobble together meanings based on nothing more than judicial fiat. *In re Doe 3* ("*Doe 3*")[45] reveals that, when called upon to construe statutory language, Justice Owen interprets it consistently with similar language appearing in analogous statutes. She rejects the proposition that judges can interpret a statute to bear a meaning that they would have assigned it had they been members of the legislature.

*Doe 3* saw the Texas Supreme Court interpret the final of the three exceptions to the parental notification requirement: "whether notification may lead to physical, sexual, or emotional abuse of the minor."[46] The majority could not agree on an appropriate

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[40] Hearings on Senate Bill 30 Before the House State Affairs Comm., 76th Leg., tape 3, side B (Tex. Apr. 19, 1999) (statement of Rep. King). The Texas Legislature made audiotape recordings of the proceedings surrounding the adoption of the Parental Notification Act, but apparently did not produce written transcripts. The Texas Supreme Court transcribed a number of the materials at its own expense. *See In re Doe 1(II)*, 19 S.W.2d 346. 373 (Tex. 2000) (Hecht, J., dissenting) ("*Doe 1(II)*"). The materials are extensively quoted in Justice Abbott's dissent in *Doe 1(II)*. *See id*. at 383-93 (Abbott, J., dissenting).

[41] Hearings on Senate Bill 30 Before the House State Affairs Comm., 76th Leg., tape 1, side A (Tex. Apr. 19, 1999) (statement of Rep. Delisi).

[42] *Id*. tape 3, side B (Apr. 19, 1999) (statement of Rep. Gray).

[43] Hearings on Senate Bill 30 Before the Senate Human Services Comm., 76th Leg., tape 3, at 4 (Mar. 10, 1999) (statement of Sen. Bernsen).

[44] *NAF Report* at 4.

[45] 19 S.W.3d 300 (Tex. 2000).

[46] TEX. FAM. CODE § 33.001(i) (2000).

definition of "abuse."[47] For her part, Justice Owen looked to an analogous definition contained in section 261 of the Texas Family Code, located just a few chapters away from the Parental Notification Act, also a part of the Family Code. Under the Legislature's definition, conduct constitutes "abuse" if it produces "mental or emotional injury to a child that results in an *observable and material impairment* in the child's growth, development, or psychological functioning."[48]

The U.S. Supreme Court has long recognized as a "fundamental canon of statutory construction" that judges should construe the words of a statute "in their context and with a view to their place in the overall statutory scheme."[49] In particular, "[i]dentical words used in different parts of the same act are intended to have the same meaning."[50] Relying on the Legislature's pre-existing statutory definition, Justice Owen argued, was preferable to the Court fabricating an entirely new one: "rather than fashioning its own definition, a Court should apply the Legislature's definition of 'abuse' when interpreting other provisions of the same Code unless there is a good reason for not doing so."[51] As the Legislature already had defined "abuse" in a related section of the Texas Family Code, the objective standard it had laid out would be the most appropriate to use in these circumstances.[52]

A number of statements in the legislative history made by members of both parties attest that Justice Owen correctly surmised that the members of the Texas Legislature intended "abuse" to be read in light of section 261. These statements indicate that the Legislature intended the "abuse" exception to be available only to girls who stood to suffer the severest and most traumatic physical and emotional injuries. During a floor debate, Representative Helen Giddings offered an example of a minor who would qualify as having been "abused":

> I know we have provisions in this bill for abused girls when abuse is suspected or detected to get help, but there are cases where the abuse is not known. . . . [W]e had a case where a mother had a Norplant put into

[47] One group of judges cited a definition of "abuse" contained in the Texas Human Resources Code, whose relevance to the parental notification context is neither apparent nor explained. *See Doe 3*, 19 S.W.3d at 304 (Gonzales, J., concurring in the judgment) (arguing that "emotional abuse contemplates unreasonable conduct causing serious emotional injury" (citing TEX. HUM. RES. CODE § 48.3002(2) (2000))). Another group of judges declined to identify any sort of statutory tether for their favored definition, and proposed simply that "abuse is abuse." *See id*. at 307 (Enoch, J., concurring and dissenting).

[48] TEX. FAM. CODE § 261.001(1)(A) (2000) (emphasis added); *see also id*. § 261.001(1)(B) (providing that "abuse" includes "causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning").

[49] Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 809 (1989).

[50] Stenberg v. Carhart, 530 U.S. 914, 944 (2000) (citing Gustafson v. Alloyd Co., 513 U.S. 561, 570 (1995)).

[51] *Doe 3*, 19 S.W.3d at 319 (Owen, J., dissenting); *see also id*. (urging "[d]eference to the Legislature's definition of emotional abuse").

[52] *Id.* at 320.

the arm of her child so that the father could have sex with that child without fear of pregnancy.[53]

Two days later, another member cited Representative Giddings' example as evidence of the need for a judicial bypass provision: "Look, the parent is abusive, the parent, in Ms. Giddings' case is selling the child, we need a judicial bypass."[54] And Senator Mario Gallegos repeatedly expressed concern about parents who would kill their daughters, or injure them so severely that they required hospitalization, after learning that they were pregnant.[55]

Thus Justice Owen's conclusion that Jane Doe 3 had not established that she could be "abused" hardly reflects "a lack of compassion for victims of abuse."[56] In fact, the girl in that case conceded that she had never been abused either physically or emotionally, and that she had no idea how her father would react to the news of her pregnancy.[57] Justice Owen therefore concluded that the girl's fears about her father's temper simply did not rise to the level of severity the Legislature had in mind when it created an exception for girls who may suffer "observable and material" abuse that would "impair the child's growth, development, or psychological functioning."[58]

## IV. Upholding the Prerogatives of Trial Courts: *Doe 1(II)*

Justice Owen's dissent in *In re Jane Doe* ("*Doe 1(II)*")[59] indicates that she not only respects the institutional prerogatives of the legislature and of superior courts. She also refuses to interfere with the unique fact-finding function of trial courts. Unlike courts of appeals, which typically resolve pure questions of law, trial courts have the additional responsibility of determining what took place as a factual matter. Appellate courts are loath to interfere with this fact-finding function, because trial judges are better equipped to observe the girl's maturity and assess the demeanor and credibility of witnesses than are appellate judges, who merely review a paper record.[60] In *Doe 1(II)*, the majority held that Jane Doe 1—whose case had returned to the Court after the initial

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[53] *See* House Debate on Committee Substitute Senate Bill 30, 76th Leg., tape 147, side A (Tex. May 19, 1999) (statement of Rep. Giddings).
[54] *See id.* tape 158, side B (May 21, 1999) (statement of Rep. Clark).
[55] *See, e.g.*, Hearings on Senate Bill 30 Before the Senate Human Services Comm., 76th Leg., tape 1, at 22; tape 2, at 14; tape 2, at 25 (Mar. 10, 1999) (statement of Sen. Gallegos).
[56] *NAF Report* at 9.
[57] Jane Doe 3 testified as follows before the trial court:

> Q Has your dad ever physically abused you?
> A Me, no.
> ***
> Q Don't you think he's going to be even more upset when he finds out that this occurred without his knowledge?
> A I guess. I don't know.

*See Doe 3*, 19 S.W.3d at 312 (Hecht, J., dissenting).
[58] *See* TEX. FAM. CODE § 261.001(1)(A) (2000).
[59] 19 S.W.3d 346 (Tex. 2000).
[60] *See, e.g.*, Taylor v. Meek, 276 S.W.2d 787, 790 (Tex. 1955).

remand—had established that she was "mature and sufficiently well informed" to have an abortion without telling her parents. Justice Owen dissented, criticizing the majority for itself evaluating the evidence before the trial court, rather than following the customary practice of deferring to that court's factual findings.

According to Justice Owen, the majority "has usurped the role of the trial court, reweighed the evidence, and drawn its own conclusion"—a practice that was contrary to "more than fifty years of precedent regarding appellate review of a trial court's factual findings."[61] According to well-settled Texas law, the Texas Supreme Court may disregard a trial court's factual findings only if there is "no evidence" in the record to support them. In making that determination, the Court is "required to determine whether the proffered evidence as a whole rises to the level that would enable reasonable and fair-minded people to differ in their conclusions."[62] Ultimately, the Court cannot disturb a trial judge's findings unless *no reasonable person* could have reached the same conclusion.[63] Justice Owen's commitment to upholding the powers of the trial courts—and not any hostility to the rights of minors—is what informs her decisions.

Although Justice Owen acknowledged that it was "a close case,"[64] she concluded that the appellate record contained enough evidence to support the trial court's finding that Jane Doe 1 was not well enough informed to have an abortion without involving one of her parents in the decision. For instance, the girl gave little indication that she had considered the alternatives to abortion, such as giving the infant up for adoption or keeping it. Jane Doe 1 did not know that adoptive parents are thoroughly screened before and after a child is placed with them, and had not considered whether her parents would help, financially or otherwise, raise the child.[65] It must be stressed that Justice Owen did not *herself* conclude that the girl was not sufficiently well informed; rather, Justice Owen concluded that *evidence supported the trial court's finding* that the girl was not sufficiently well informed:

> The question in this case is not whether this Court would have ruled differently when confronted with all the evidence that the trial court heard. The question is whether legally sufficient evidence supports the trial court's judgment. The answer to this latter question is yes.[66]

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[61] *Doe 1(II)*, 19 S.W.3d at 376, 377 (Owen, J., dissenting); *see also id*. at 383 ("Longstanding principles of appellate review and our Texas Constitution do not permit this Court to substitute its judgment for that of the trial court and or [sic] to ignore the evidence, as it has done.").

[62] Transportation Ins. Co. v. Moriel, 879 S.W.2d 10, 24 (Tex. 1994); *see also* Harbin v. Seale, 461 S.W.2d 591, 592 (Tex.1970); Burt v. Lochausen, 249 S.W.2d 194, 199 (1952).

[63] *See, e.g.*, *Moriel*, 879 S.W.2d at 25 ("[T]he court must be persuaded that reasonable minds could not differ on the matter . . . ." (citation omitted)); *id*. ("The rule as generally stated is that if reasonable minds cannot differ from the conclusion that the evidence lacks probative force it will be held to be the legal equivalent of no evidence." (citation omitted)).

[64] *Doe 1(II)*, 19 S.W.3d at 381 (Owen, J., dissenting).

[65] *See id*. at 382-83.

[66] *Id*. at 383.

Justice Owen further faulted the majority for failing to defer to the trial court's implicit factual finding that the girl was not sufficiently "mature" to have an abortion without telling her parents—the other element a girl must prove before she can invoke the "mature and sufficiently well informed" exception. Although the trial court found, as a factual matter, that the girl was not "well informed," it made no explicit finding as to whether she was "mature." The majority therefore held that it could presume that the minor was mature enough to have an abortion without parental involvement.[67]

In fact, under well-settled Texas law, when a trial court issues factual findings, appellate courts are required to presume that there is evidence to support "not only the express findings . . . but also any omitted findings which are necessary to support the judgment."[68] As such, the Supreme Court could not presume that the girl was mature unless, based on the evidence before the trial court, *no reasonable person* could have reached the opposite conclusion.

As was the case with the "well informed" prong, Justice Owen concluded that the record contained enough evidence to support the trial judge's failure to find that the girl was mature. In particular, there was evidence that the girl's reason for not wanting her parents to know about her intent to have an abortion was her fear that they would stop paying for her automobile and her car insurance.[69] Again, Justice Owen did not *herself* make a finding that the girl was not mature, nor did she suggest that the girl's attempt to obtain a judicial bypass was itself evidence of a lack of maturity.[70] She simply deferred to the trial court's implicit finding—for which the record contained some supporting evidence—that the girl was not mature: given the evidence in the record, "[t]he trial court could reasonably find that Doe was not mature enough to make the abortion decision without telling one of her parents."[71]

Justice Owen also criticized the procedurally irregular manner in which the majority decided the case. After the initial remand of February 25, 2000—in which Justice Owen concurred—Jane Doe 1's application for a judicial bypass was denied by the trial and appellate courts. On March 10, 2000, the Supreme Court issued an order, without opinion, approving the girl's request to have an abortion without telling her parents.[72] The Court did not explain its reasons for denying parental notification until June 22, 2000, over three months later. Justice Owen rejected the majority's claim that an expedited ruling would enable the girl to have a "vacuum aspiration" or "suction curettage" abortion, a less intrusive procedure that, according to Planned Parenthood,

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[67] *See id*. at 357-58.
[68] Wisdom v. Smith, 209 S.W.2d 164, 166-67 (Tex. 1948); *see also* Cates v. Clark, 33 S.W.2d 1065, 1066 (Tex. 1931) (invoking the "well-recognized rule of law" that appellate courts must presume that all facts were found in support of a trial court's judgment, when the trial court has issued findings of fact and evidence in the record supports the judgment).
[69] *Doe 1(II)*, 19 S.W.3d at 381 (Owen, J., dissenting).
[70] *NAF Report* at 6.
[71] *Doe 1(II)*, 19 S.W.3d at 381 (Owen, J., dissenting).
[72] *See In re Jane Doe 1*, 19 S.W.3d 300 (Tex. 2000).

can be performed until the end of the thirteenth week of pregnancy.[73] On the date the Court issued its opinionless order, Jane Doe 1 was already into her fifteenth week of pregnancy. The thirteen-week deadline had passed some two weeks prior, and the girl was no longer eligible for a vacuum aspiration or suction curettage abortion.[74]

Nor was there any indication that the girl sought an immediate ruling from the Supreme Court. She never indicated to the Court that a delay would prevent her from undergoing a particular type of abortion procedure, or otherwise would risk damaging her health. In fact, she requested and was granted a seven-day continuance by the court of appeals.[75] The girl's notice of appeal to the Supreme Court did state "ATTENTION CLERK: PLEASE EXPEDITE"—but that language appears on the standard notice of appeal form, promulgated by the Supreme Court itself, used in *all* parental notification cases.[76]

## V. Respecting the Legal Rights of Parents: *Doe 4(I)*

Justice Owen's dissent in *In re Jane Doe 4* ("*Doe 4(I)*")[77] demonstrates her respect for parents' right under the law to decide how to best bring up their children. In *Doe 4(I)*, the majority concluded that a seventeen-year-old girl was entitled to another opportunity to attempt to prove that having an abortion without telling her parents was in her "best interest." Some evidence in the record indicated that the girl's parents might stop supporting her financially if they learned that she had become pregnant. As the majority recognized, however, the girl's testimony "largely consisted of monosyllabic responses to leading questions."[78]

In dissent, Justice Owen denied that "this Court has the authority, statutory or otherwise, to decide that parents will not be permitted to exercise their right to withhold support from their children when those children become adults in the eyes of the law."[79] She repeatedly expressed her "fervent hope that no matter what the transgressions of the child have been, no parent would sever all contact with an adult child."[80] But parents have no legal obligation under Texas law to support their children once they

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[73] According to the Planned Parenthood pamphlet submitted to the Supreme Court as part of the record, vacuum aspiration or suction curettage is available "through the end of the 13th week of pregnancy." *Quoted in Doe 1(II)*, 19 S.W.3d at 378 (Owen, J., dissenting).

[74] The girl testified that a February 19 sonogram revealed that she had been pregnant for eleven weeks and one day. *See id*. As such, she completed her thirteenth week of pregnancy—and hence her eligibility for vacuum aspiration or suction curettage—on March 3. By March 10, the date of the Court's opinionless decision, the girl had been pregnant for fully fourteen weeks, and had entered her fifteenth week.

[75] *See id*.

[76] *See id*. at 377; *see also id.* at 370 & n.24 (Hecht, J., dissenting) (citing PARENTAL NOTIFICATION R., Forms 3A & 4A (Tex. 2000)).

[77] 19 S.W.3d 322 (Tex. 2000).

[78] *Id*. at 323-24.

[79] *Id*. at 334 (Owen, J., dissenting).

[80] *Id*.; *see also id.* at 335 ("I would hope that parents continue to provide love and support to their children beyond the age of eighteen and to provide funds for an education beyond high school if the parents are able to do so . . . .").

turn 18 and graduate from high school[81]—which the girl would soon do. Justice Owen therefore concluded that the girl would not be entitled to a "best interest" exception if her parents would withhold financial support after she reached the age of majority. (By negative implication, Justice Owen would hold that a girl is entitled to an abortion without notification if her parents would stop supporting her before she turned 18.) According to Justice Owen, "it is not the business of courts to interject their own values into the lives of the citizens of this State."[82] Instead, "[w]hether parents do or do not provide support for their children who are considered adults in the eyes of the law is a parental call, not a call for the courts in determining the best interests of a child."[83]

Nor is it the case, as an interest group now claims, that in a later stage of the same litigation Justice Owen concluded that the girl's medical condition was not relevant to whether she was entitled to have an abortion without notifying her parents. In *In re Jane Doe 4* ("*Doe 4(II)*"),[84] the Court unanimously held that the girl had not proven that she was "mature and sufficiently well informed," principally because she could not explain how her medical condition made abortion a riskier option for her. Because of the girl's lack of understanding, the Court concluded, it was best to involve her parents in the decision.[85] Justice Owen joined an opinion concurring in the judgment, which argued that the girl should be required to tell her parents that she wanted an abortion, not because she did not understand the health risks in particular, but because as a general matter she had shown "no depth of understanding that a minor should be expected to have before making the 'grave and indelible' decision to have an abortion."[86]

This is hardly evidence of "Owen's apparent stance that even health risks should not be taken as seriously by the courts."[87] On the contrary, the majority opinion concluded that the girl was not entitled to a judicial bypass on the ground that she lacked knowledge about how her medical condition would affect her abortion.[88] The concurrence Justice Owen joined quite expressly *denied* that the girl's apparent confusion about her medical condition was the reason she was not entitled to keep the abortion secret from her parents: "the deficit in Doe's testimony is not that she could not explain whether and how her prior treatment for a medical condition would affect her having an abortion."[89]

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[81] *See* TEX. FAM. CODE § 151.003(b) (2000).
[82] *Doe 4(I)*, 19 S.W.3d at 334 (Owen, J., dissenting).
[83] *Id*. at 335.
[84] 19 S.W.3d 337 (Tex. 2000).
[85] *See id*. at 339.
[86] *Id*. at 342 (Hecht, J., concurring) (quoting Bellotti v. Baird, 443 U.S. 622, 642 (1979) ("*Bellotti II*")).
[87] *NAF Report* at 9.
[88] *See Doe 4(II)*, 19 S.W.3d at 340 (reasoning that "if she does have a current health risk, then her physical needs and the potential dangers may way in favor of involving her parents in her decision").
[89] *Id.* at 342 (Hecht, J., concurring).

## VI. A Final Note on "Unconscionable Judicial Activism"

The members of the Texas legal community know Justice Owen to be a jurist of the highest integrity, one who is committed to following the law no matter where it leads, and subordinating her personal policy preferences, whatever they may be, to the expressed intent of the legislature. In fact, every major newspaper in Texas endorsed Justice Owen during her reelection campaign in 2000. With respect to her nomination to the Fifth Circuit, the *Dallas Morning News* editorialized that "Justice Owen's lifelong record is one of accomplishment and integrity. She is one of the few judicial nominees to receive a unanimous 'well qualified' rating from the American Bar Association."[90] Likewise, Texas Chief Justice Tom Phillips agreed that Justice Owen "tries to follow the legislative will in every case and apply the law, not invent it."[91] Baylor University President Herbert Reynolds—who formerly served as Chairman of the Texas Commission on Judicial Efficiency—wrote: "Based on my knowledge of Justice Owen for the past 30 years, I believe that you simply cannot make a more solid choice for the 5th U.S. Circuit Court of Appeals."[92]

Despite these testimonials to Justice Owen's temperance, interest groups have seized on a single sentence from Justice Gonzales's concurrence in *Doe 1(II)* in an effort to disparage her commitment to practicing judicial restraint. Justice Gonzales's concurrence must be read in the context of Justice Hecht's dissent in that same case (a dissent that Justice Owen did not join). The Hecht dissent expressly accused the members in the majority—including Justice Gonzales, whom the dissent individually names—of reading their policy preferences into the Parental Notification Act.[93] Justice Gonzales wrote separately to deny Justice Hecht's allegation; that is, to dispute the "suggest[ion] that the Court's decisions are motivated by personal ideology. *See* 19 S.W.3d 367 (Hecht, J., dissenting)."[94] Justice Gonzales further explained that he disputed "Justice Hecht['s] charge[ ] that our decision demonstrates the Court's determination to construe the Parental Notification Act as the Court believes the Act should be construed and not as the Legislature intended."[95]

According to Justice Gonzales, the dispute among the Justices reflected no more than disagreement over the proper way to interpret a statute. He explained that "every member of this Court agrees that the duty of a judge is to follow the law as written by

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[90] Editorial, *Stop the Payback; Senate Needs to Move on Judicial Nominees*, DALLAS MORNING NEWS, Feb. 10, 2002, at 2J.

[91] Mary Flood, *Judicial Nominee Takes Issue with Conservative Label*, HOUSTON CHRON., May 10, 2001, at A37.

[92] Letter from Herbert H. Reynolds, Baylor University President and Chancellor Emeritus, to All Members of the Senate Judiciary Committee (March 25, 2002).

[93] *See In re Jane Doe*, 19 S.W.3d 346, 367 (Tex. 2000) (Hecht, J., dissenting) ("*Doe 1(II)*"):

> The Court adamantly refuses to listen to all reason, and the only plausible explanation is that the Justices who comprise the majority—Chief Justice Phillips, Justice Enoch, Justice Baker, Justice Hankinson, Justice O'Neill, and Justice Gonzales—have resolved to impair the Legislature's purposes in passing the Parental Notification Act, which were to reduce teenage abortions and increase parental involvement in their children's decisions.

[94] *Id*. at 365 (Gonzales, J., dissenting).

[95] *Id*. at 366.

the Legislature. This case is no different."[96] Justice Gonzales then explained that it was his duty to follow the law as he interpreted it, regardless of what his policy views may or may not have been, and regardless of how other Justices interpreted the Act:

> [T]o construe the Parental Notification Act so narrowly as to eliminate bypasses, or to create hurdles that simply are not to be found in the words of the statute, would be an unconscionable act of judicial activism. As a judge, I hold the rights of parents to protect and guide the education, safety, health, and development of their children as one of the most important rights in our society. But I cannot rewrite the statute to make parental rights absolute, or virtually absolute, particularly when, as here, the Legislature has elected not to do so. . . .
>
> While the ramifications of such a law and the results of the Court's decision here may be *personally troubling to me* as a parent, it is *my obligation* as a judge impartially to apply the laws of this state without imposing *my moral view* on the decisions of the Legislature. Justice Hecht charges that our decision demonstrates the Court's determination to construe the Parental Notification Act as the Court believes the Act should be construed and not as the Legislature intended. I respectfully disagree. This decision demonstrates the Court's determination to see to it that we discharge our responsibilities as judges, and that personal ideology is subordinated to the public will that is reflected in the words of the Parental Notification Act, including the provisions allowing a judicial bypass.[97]

The interest groups wrongly interpret the first sentence quoted above to mean that Justice Gonzales was charging other members of the Court with engaging in inappropriate judicial activism. But that reading ignores the subsequent sentences, as well as the broader context of Justice Hecht's accusations against the majority of the Court for engaging in judicial activism. Rightly read, Justice Gonzales's concurrence does not charge any other Justice with being judicial activists; it simply denies Justice Hecht's allegations that the majority was interpreting the Parental Notification Act in light of their political or ideological commitments.

Justice Owen's voting record and opinions in the parental notification cases defy easy categorization. Justice Owen voted to allow abortions without notification more than some of her colleagues, and less than others.[98] The record therefore belies any

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[96] *Id*. at 365.
[97] *Id*. at 366 (emphasis added).
[98] In the twelve rulings the Texas Supreme Court has issued as of July 9, 2002, Justice Owen was with the majority nine times, and recorded a dissent just three times. (By way of contrast, Justice Hecht joined the majority in seven cases, and recorded a dissent in five.) Justice Owen joined the majority in *Doe 1(I)*, *Doe 2*, *Doe 4(II)*, *Doe 5*, *Doe 6*, *Doe 7*, *Doe 8*, *Doe 9*, and *Doe 10*. She dissented in *Doe 1(II)*, *Doe 3*, and *Doe 4(I)*. In three cases, Justice Owen joined or authored an opinion that facilitated a girl's attempt to procure an abortion without telling her parents. In nine cases, she joined or authored an opinion that required (or, in the case of a dissent, would have required) a girl to notify her parents before having an abortion. (The numbers for Justice Hecht, by contrast, are one and eleven,

assertion that she reflexively adopts any one position in parental notification cases. But more fundamentally, a Justice's "batting average" in parental notification cases is a poor indicator of his or her views on the frequency with which judicial bypasses should be granted.[99] Under Texas law, parental notification cases can be appealed to the Texas Supreme Court only when a trial court has denied a girl's request to have an abortion without telling one of her parents, and an appellate court has affirmed that denial. There is no appeal if the lower courts approve the bypass.[100] Thus, the only opportunities the Supreme Court has to consider whether to grant judicial bypass are in cases where two lower courts have already determined that the girl's parents must be notified before she can have an abortion. Put another way, the cases that reach the Texas Supreme Court are disproportionately likely to present a situation where the statute requires a girl to inform her parents that she plans to have an abortion.

## VII. Conclusion

As long ago as 1835, Alexis de Tocqueville recognized the close interrelationship between American law and American politics. "Scarcely any political question arises in the United States," he wrote, "that is not resolved, sooner or later, into a judicial question."[101] But the fact that judges decide politically charged issues does not mean that they should decide them politically. Instead, consistent with the rule of law and the limited role of the judiciary in a democratic system of government, judges must refrain from reading their personal beliefs into the law, and instead must give effect to the intent of the lawgiver.

Justice Pricilla Owen's demonstrated commitment to doing just that reveals her to be the sort of jurist the American people have come to expect should occupy the federal bench. She has balanced the competing interests of pro-life activists and abortion providers, refusing to side reflexively with either group of litigants, and rejecting the proposition that the First Amendment is an excuse for unlawful protests. She has interpreted the Texas Parental Notification Act consistently with the U.S. Supreme Court's pronouncements on whether an underage girl is "mature" and "well informed," and whether a girl's plan to have an abortion without telling her parents is in her "best interest." She has interpreted "abuse" in the Parental Notification Act consistently with that term's definition in a similar Texas statute, refusing to manufacture a definition herself. She has deferred to the factual findings of the trial courts, which are in a unique position to assess the demeanor and credibility of witnesses, and has denied that appellate courts can reweigh the evidence themselves.

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respectively.) Justice Owen voted to facilitate abortion without notification in *Doe 1(I)*, *Doe 2*, and *Doe 10*. She voted to require notification in *Doe 1(II)*, *Doe 3*, *Doe 4(I)*, *Doe 4(II)*, *Doe 5*, *Doe 6*, *Doe 7*, *Doe 8*, and *Doe 9*.

[99] It goes without saying that the "batting average" is even worse evidence of members' views about abortion generally, since the parental notification cases involve no question about whether the Constitution guarantees the right to abortion, or the scope of that right.

[100] *See* TEX. FAM. CODE § 33.004 (2000).

[101] 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 280 (Phillips Bradley trans., Alfred A. Knopf 1994) (1835).

Any one of these rulings, standing alone, would be compelling evidence of the author's understanding of the modest powers of the judiciary. And any one of these jurisprudential pillars—dedication to Supreme Court precedent, deference to the legislature, respect for the trial courts' factual findings—would qualify the author for a seat on the federal bench. Fortunately for the people of the Fifth Circuit, Justice Owen is committed to them all. I enthusiastically support Justice Owen's nomination to the Fifth Circuit, and urge the Senate to consider and approve her without additional delay.